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In the

Supreme Court of the United States

OCTOBER TERM, 1958

No. [redacted] 76

THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY, the HONORABLE LLOYD SHORETT, Judge; and TAXICAB DRIVERS AND CHAUFFEURS LOCAL UNION NO. 465, and GEORGE LANCASTER, its Secretary-Treasurer, *Petitioners,*

vs.

THE STATE OF WASHINGTON on the Relation of Yellow Cab Service, Inc., a corporation, *Respondent.*

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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THE ARGUS PRESS, SEATTLE

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OPINION BELOW

The opinion of the Supreme Court of Washington is reported at 153 Wash. Dec. 358, 333 P.(2d) 924 (1959), and is set forth in Appendix "A," pages 39-48, of the Petition for Writ of Certiorari.

JURISDICTION

The jurisdiction of this court was invoked under 28 U.S.C. Sec. 1257(3), as set forth on page 2 of the Petition, and the facts as set forth therein are not in dispute.

STATUTE INVOLVED

The statutory provisions involved are those included

in the National Labor Relations Act, 49 Stat. 449, as amended, 29 U.S.C. Secs. 141-187.

QUESTIONS PRESENTED

The questions as set forth on pages 2 and 3 of the Petition for Writ of Certiorari are misleading, and therefore require a restatement.

The true question is: Does the National Labor Relations Board have jurisdiction (even though no effort has been made to invoke it) over a dispute which has resulted in peaceful picketing called by a labor union against 118 separately owned small taxicab companies and their cooperative servicing organization where:

1. None of the cab companies or the servicing company is engaged in interstate commerce;

2. Only 1 10th of 1% of the total combined gross revenues of the 118 taxicab companies, a mere annual revenue of $1,436.55, is obtained from "through" taxicab business from one interstate carrier terminal to another; and

3. There is no evidence of any kind that the "dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce" in the sense in which the term "commerce" is defined in the National Labor Relations Act.

STATEMENT OF THE CASE

Much of the statement of the case contained in the Petition is correct. There are enough errors and distortions in emphasis, however, that we submit that for a

fairer and more objective statement of the case, it would be desirable for the court to read the statement of facts as contained in those portions of the opinion of the Supreme Court of the State of Washington found in Appendix "A" to the Petition on pages 39-41, inclusive, and pages 43-44.

The court below did not decide the question as to whether the 118 separate Yellow Cab corporations and the service organization, Yellow Cab Service, Inc., should be treated as one entity in considering the jurisdiction of the National Labor Relations Board. It did not do so because it held that the total gross revenue of $1,436.55 of all 118 Yellow Cab companies derived from business in the flow of interstate commerce (or approximately $12.00 per cab) was so small that it had no appreciable effect upon interstate commerce. (See the opinion, pages 44 and 48 of the Petition.) Much of the evidence on this issue presented to the trial court is, therefore, not germane.

It should be pointed out, however, that unlike the factual situation in most of the labor cases involving cab companies, both before the National Labor Relations Board and the courts, we are dealing here with 118 entirely separate legal entities, with no interlocking directors, officers or stockholders, each of which is legally and morally entitled to bargain on its own behalf in its labor relations (Statement of Facts, 6, 11, 70, 77, 78, 82, 120, 125, 172, 183, 206-208, 235, 239-241, 247; Transcript, 38, 67).

While it is true, as the affidavit of A. H. Wenck, President of the service corporation, states, that ten

dispatchers failed to report for work, and that this caused reduced operations and delays at headquarters (Tr. 45; Statement of Facts, 76), there is no evidence of any kind that the failure of the dispatchers to cross picket lines burdened or obstructed interstate commerce or the free flow of interstate commerce. The record is completely silent with reference to any obstruction to interstate commerce, and, therefore, it must be presumed that all railroad lines, airport terminals and steamship lines are being served by Yellow Cabs or others without any burden or obstruction to the flow of interstate commerce. The failure of the respondent's dispatchers to go to work affected only its headquarters, and had nothing to do with interstate commerce.

ARGUMENT

1. This case presents no unusual question of law justifying its review by this court.

Contrary to a statement contained on page 20 of the Petition, the judgment of the court below was not based upon an erroneous interpretation of the scope of the National Labor Relations Act. As the opinion indicates, the decision did not turn upon technical questions relating to the construction of the Act, but upon practical considerations (Opinion lower court, page 47 of the Petition).

Both the court below and the respondent concede that under the express language of the National Labor Relations Act, the National Labor Relations Board, under the decisions of this court, has exclusive jurisdiction in any dispute where the activity of either the

employer or the employee *either* is directly in interstate commerce *or* clearly *affects* commerce by burdening or obstructing the same or the free flow of commerce or leads or tends to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

The decision of the court below was based upon two sound conclusions, to-wit: (1) that 1/10th of 1% of the gross revenue of a cab system, amounting to less than $1,500.00 a year for the entire system, or only about $12.00 per year per cab, is so small that it could not have any appreciable effect upon interstate commerce, and (2) that there was no showing of any kind that the picketing by the union had any effect upon interstate commerce.

If there were some important question of law not heretofore decided by this court or of legal policy affecting the substantive rights of individuals, however humble, we would welcome a review of this case by the Supreme Court, but there is not.

2. The doctrine of *de minimis non curat lex* is applicable here.

We have reviewed all of the cases of this court and the inferior federal courts dealing with the applicability of the doctrine of *de minimis non curat lex* to cases arising under Secs. 7 and 8 of the National Labor Relations Act, as well as cases concerning themselves with ratios between local and interstate business. For the purpose of responding to the Petition, we assume that the law as determined by these cases is the law of the

land. As we will later point out, however, none of these cases is applicable on their facts to this case.

The facts are uncontroverted, having been largely stipulated, and need no review by this or any other court. The combined gross revenues of the 118 taxicab companies from all sources during the last fiscal year were $1,429,914.02. During the same fiscal year, revenues received from picking up pasengers from airports and delivering passengers to the same airports amounted to $202,880.40.

None of this gross revenue, however, is involved in this case, because it has been well settled by this court in the case of *U.S. v. Yellow Cab Co.*, 332 U.S. 218, 91 L.Ed. 2010 (1947), that the mere transportation of a passenger by taxicab from his home or hotel to a railroad station or an airport or from the latter to his home or hotel does not involve interstate commerce.

We recognize the fact that the scope of authority granted to the National Labor Relations Board exceeds that covered by the Sherman Anti-trust Act and the Fair Labor Standards Act. The Sherman Anti-trust Act was involved in the *Yellow Cab Co.* case, *supra*, and the Fair Labor Standards Act was involved in the decision of the Circuit Court of Appeals for the Ninth Circuit in the case of *Mateo v. Auto Rental Co.*, 240 F.(2d) 831 (C.A. 9, 1947), both of which cases held that local taxicab or limousine service to or from airports does not involve interstate commerce.

Justice Murphy, in delivering the opinion of the

court in the *Yellow Cab Co.* case, *supra*, among other things said:

> "Here we believe that the common understanding is that a traveler intending to make an interstate rail journey begins his interstate movement when he boards the train at the station and that his journey ends when he disembarks at the station in the city of destination. What happens prior or subsequent to that rail journey, at least in the absence of some special arrangement, is not a constituent part of the interstate movement. The traveler has complete freedom to arrive at or leave the station by taxicab, trolley, bus, subway, elevated train, private automobile, his own two legs, or various other means of conveyance. Taxicab service is thus but one of many that may be used. It is contracted for independently of the railroad journey and may be utilized whenever the traveler so desires. From the standpoints of time and continuity, the taxicab trip may be quite distinct and separate from the interstate journey. To the taxicab driver, it is just another local fare."

Despite the dissimilarity of the jurisdiction extended under the different Congressional acts involved, the reasoning in the *Yellow Cab Co.* decision is equally applicable in this case as to whether this type of revenue involves interstate commerce. Obviously, unless this decision is to be reversed, it does not.

There is, however, as pointed out both in the decision of the lower court (see Petition, p. 44) and the Petition itself (see Petition, p. 13), included in the combined gross revenues of the 118 Seattle Yellow Cab companies a total of $1,436.55, received from taxicabs

transporting passengers in interstate commerce from one terminal to another.

Also, for the purpose of responding to the Petition, we assume that the $1,436.55 in revenues received by cabs transporting interstate passengers from one terminal to another are in the flow of interstate commerce, and that if any picketing activity of the Petitioner affects or tends to affect such flow of commerce then it would subject the dispute to the jurisdiction of the National Labor Relations Board, providing the doctrine of *de minimis lex* were not applicable.

In considering the applicability of the doctrine of *de minimis lex*, we take into account not only the fact that less than $1,500.00 in gross revenue per year is involved in revenues affecting the flow of commerce, but also the fact that 118 separately owned taxicab companies were involved, or an average annual revenue from taxicab operations affecting the flow of commerce of approximately $12.00 per taxicab company per year, and this amounts to only 1/10th of 1% of the revenue from the entire system or the average revenue of each of the 118 cabs. Unless the salutary rule that the law, and particularly this court, cannot be concerned with trifles is to be completely abandoned, it must be applied to the facts of this case.

Before discussing the cases on the subject of *de minimis lex*, we will turn next to the question as to whether there was any evidence to show that the picketing by the Petitioner affected commerce within the meaning

of the National Labor Relations Act, since the cases to be cited bear on both points.

3. There is no evidence in this case that there was any interruption in the servicing by taxicabs of interstate passengers at any of the terminals, air, rail or steamship, or any showing that the picketing activities affecting the dispatchers would tend to interfere with the flow of interstate commerce.

The Petitioners did not put on a single witness to show that there had been an interruption in any Yellow Cab service between the Seattle-Tacoma Airport, the King County Airport, the railroad stations and the steamship docks. The only place where the pickets were stationed was in central downtown Seattle, at the headquarters of the respondent, which prevented the dispatchers from entering the premises.

There is no evidence that any pickets were stationed at any of the airports or railroad terminals or steamship docks.

Had pickets been stationed at these interstate transportation terminals, an argument might have been made that such a labor activity would have tended to disrupt or obstruct or burden commerce or the flow of commerce. We submit that there was no testimony of any kind at the time of the hearing in the trial court even remotely bearing upon any activity of the Petitioners which affected or tended to affect commerce or the flow of commerce.

All of the federal court cases we have been able to find invoking the National Labor Relations Board's

jurisdiction because of the effect of labor practices upon interstate commerce concerned the movement either of raw materials or of manufactured products in interstate commerce. That is, the employers concerned either made substantial sales or purchases in interstate commerce, so that a work stoppage due to a labor dispute would inevitably "affect" interstate commerce by reducing the flow of materials in that commerce. But respondent does not buy and sell in interstate commerce; it is engaged, rather, in the transportation of persons entirely within the State of Washington.

Except for the minute portion of its revenues received from the transportation of passengers in interstate commerce from one terminal to another, its activities are entirely local and, at the very most, may be said to constitute a local adjunct to interstate passenger transportation. A clear distinction must be drawn between the effect upon interstate commerce of a strike against a manufacturer, distributor or retailer buying and selling goods in that commerce, and the effect of a strike against a local transportation agency. For the National Labor Relations Board to have jurisdiction in the latter type of case, the carrier must either be "in interstate commerce" to a substantial extent or the effect of the strike upon its activities must be clearly shown to burden or obstruct interstate commerce.

If it is contended that the labor dispute involving respondent's purely local transportation service somehow "affects" interstate commerce, that is a matter for proof just like any other claim of fact advanced to defeat the jurisdiction of the state courts.

This is not a matter for speculation here, as may be true in cases where a temporary restraining order has been obtained initially and continued in effect during trial so that no real appraisal of the effect of picketing on interstate commerce can be made because no picketing has taken place.

In this case, no such relief was ever granted, and Petitioners have at all times been free to picket as they chose. Such picketing had been in progress for twenty-three days by the time the trial court ruled, yet Petitioners offered no evidence that the dispute had affected respondent's local activities in such a way as to burden or obstruct the free flow of interstate commerce. It seems reasonable to assume that Petitioners would have provided such proof if it were available.

At an earlier day, such an impact could have been proved, but since the 118 operating companies are for the most part driver-owned, a strike does not have the impact it once had because the owners continue to drive their cabs. The commerce in question—the interstate movement of passengers—has not been affected, and failure of proof on that fact must be fatal to Petitioners' claim that the state courts lack jurisdiction.

In all of the recent cases by this court involving both this question and the application of the maxim *de minimis lex*, there was not only evidence of a substantial volume of business either involved in interstate commerce or affecting interstate commerce, but also direct evidence that the activity of the employer or the em-

ployee had effected or would seriously affect commerce or the flow of commerce.

Somewhere, we submit, no matter how difficult it may be, a line must be drawn. That line, we assert, surely should protect state jurisdiction against the encroachment of exclusive federal jurisdiction where 99.9% of the total revenue of a relatively small enterprise like the one in question is wholly intrastate, and only 1/10th of 1% could conceivably be held to affect commerce, as in the case at bar.

The late Chief Justice Hughes, in his opinion in the case of *Santa Cruz Fruit Packing Co. v. National Labor Relations Board,* 303 U.S. 453, 82 L.Ed. 954 (1937), stated the precise issue as follows:

> "It is also clear that where federal control is sought to be exercised over activities which separately considered are intrastate, it must appear that there is a close and substantial relation to interstate commerce in order to justify the federal intervention for its protection. However difficult in application, this principle is essential to the maintenance of our constitutional system. The subject of federal power is still 'commerce,' and not all commerce but commerce with foreign nations and among the several states. The expansion of enterprise has vastly increased the interests of interstate commerce but the constitutional differentiation still obtains. *A.L.A. Schechter Poultry Corp. v. United States,* 295 U.S. 495, 546, 79 L.ed. 1570, 1588, 55 S.Ct. 837, 97 A.L.R. 947. 'Activities local in their immediacy do not become interstate and national because of distant repercussions.' Id., p. 554.

"To express this essential distinction, 'direct' has been contrasted with 'indirect,' and what is 'remote' or 'distant' with what is 'close and substantial.' Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution such as 'interstate commerce,' 'due process,' 'equal protection.' In maintaining the balance of the constitutional grants and limitations, it is inevitable that we should define their applications in the gradual process of inclusion and exclusion.

"There is thus no point in the instant case in a demand for the drawing of a mathematical line. And what is reasonably clear in a particular application is not to be overborne by the simple and familiar dialectic of suggesting doubtful and extreme cases. The critical words of the provisions of the National Labor Relations Act in dealing with the described labor practices are 'affecting commerce,' as defined (§ 2(6)). It is plain that the provision cannot be applied by a mere reference to percentages and the fact that petitioner's sales in interstate and foreign commerce amounted to 37 per cent, and not to more than 50 per cent, of its production cannot be deemed controlling. The question that must be faced under the Act upon particular facts is whether the unfair labor practices involved have such a close and substantial relation to the freedom of interstate commerce from injurious restraint that these practices may constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes."

We turn now to the principal cases of this court dealing with jurisdiction of the National Labor Relations Board in terms of volume of business and the consequent impact of labor disputes on interstate commerce. In the case of *National Labor Relations Board v. Fainblatt,* 306 U.S. 601, 83 L.Ed. 1014 (1938), this court upheld the exclusive jurisdiction of the National Labor Relations Board. The facts, however, in that case are substantially different from those here. In the *Fainblatt* case, direct interstate commerce was involved in the transportation of raw materials across state lines, to be processed in the factory of the respondents and in the transportation of the finished products to points outside the state. Justice Stone, speaking for the court, stated:

> "Here, although respondents' manufacturing business is small, employing from sixty to two hundred employees, its product is regularly shipped in interstate commerce. The Board's finding that respondents' unfair labor practices have led and tend to lead to labor disputes burdening interstate commerce and interfering with its free flow is supported by the evidence. Moreover, the Board has found specifically that respondents' unfair labor practices in attempting to prevent the unionization of their factory did in fact lead to a strike in respondents' tailoring establishment, with a consequent reduction of about 50 per cent in respondents' output. These findings are not challenged."

Therefore, the case is distinguishable on two vital points: (1) A substantial amount and percentage of the business of the company was in direct interstate commerce, and therefore the doctrine *de minimis lex*

did not apply, and (2) the strike had already reduced the company's operations by 50%, thereby directly affecting interstate commerce.

In the case of *National Labor Relations Board v. Bradford Dyeing Assoc.*, 310 U.S. 318, 84 L.Ed. 1226, (1940), this court, dealing with the question of the jurisdiction of the National Labor Relations Board, held that where half of the goods processed by the petitioner are shipped in interstate commerce and about 90% of the finished goods are also shipped in interstate commerce, the National Labor Relations Board had jurisdiction although the business of the processor constituted only a relatively small percentage *of the capacity of the entire industry.* Both percentage- and volume-wise, the business in or affecting interstate commerce was many times greater than in this case, and therefore *de minimis lex* is inapplicable.

In the most recent case of *San Diego Building Trades v. Garmon,* decided on April 20, 1959, 27 U.S. Law Week 4268, this court, in an opinion written by Justice Frankfurter, again upheld the exclusive jurisdiction of the National Labor Relations Board. This case probably goes as far as any other case in extending the doctrine of exclusive federal jurisdiction. Despite the extent to which the *Garmon* case goes in further limiting the jurisdiction of state courts, the doctrine there announced is clearly inapplicable to the case at bar.

In the *Garmon* case, the facts were that the respondent partnership, in operating their two retail lumber yards, purchased in the year before the proceeding

commenced more than $250,000.00 worth of material from outside of California for resale within the State of California, thereby being involved in interstate commerce. Furthermore, the employer in the *Garmon* case alleged that its partnership was engaged in interstate commerce.

Furthermore, the question of *de minimis lex* was not even raised, probably because under previous decisions of this court and lower federal courts smaller amounts than this, both volume- and percentage-wise, have been held not to be *de minimis lex*. There is no comparison, however, between the $250,000.00 worth of business involved in the *Garmon* case, on the one hand, and $1,500.00 in the case at bar.

For the facts with reference to the *Garmon* case, see also 353 U.S. 26, 1 L.Ed.(2d) 618, when this case was previously before this court.

In the leading companion case to the *Garmon* case, to-wit, the case of *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 1 L.Ed.(2d) 601 (1957), the facts also showed that the appellant Guss purchased materials from outside Utah in an amount a little less than $50,000.00, and also that finished products were shipped to Air Force bases, one within Utah and the other outside, so that interstate commerce was clearly held to be involved. No comparable factual situation appears in this case. Furthermore, the appellant Guss agreed that he was engaged in commerce within the meaning of the National Labor Relations Act.

On page 34 of their brief, Petitioners cite the case of

New York State Labor Relations Board v. Wags Transportation System, Inc., 130 N.Y.S.(2d) 731, aff'd 284 App. Div. 883, 134 N.Y.S.(2d) 603 (1954), as being in conflict with the decision of the lower court in this case. The facts in the two cases are so vastly different that it would be completely unrealistic to reach the same legal result in both cases.

In the *Wags* case, the court was dealing with a huge volume of taxicab traffic, affecting the terminals of the New York Central Railroad Co., New Haven Railroad and Pennsylvania Railroad Co., the New York airports and the city's numerous trans-Atlantic passenger steamships. It was dealing with literally millions of passengers, both traveling abroad and to other states in the direct flow of international and interstate travel. The court was careful to point out the extraordinary impact which the taxicab business in the City of New York had upon such flow of passenger traffic in international and interstate commerce, and how a strike against the Terminal System taxicabs would seriously impair the flow of traffic in and out of New York. The court clearly found upon the detailed and imposing facts received in evidence that there was an immediate and overwhelming threat of obstruction to interstate passenger traffic. There was no such evidence presented in this case, and the lower court's holding was based in part upon the fact that there was no such evidence. This alone is sufficient to distinguish it from the *Wags* case.

In all of the Federal Circuit Court cases dealing with the applicability of the doctrine *de minimus lex*, and the question as to whether commerce is affected, in order to

invoke National Labor Relations Board jurisdiction, the percentage and volume of commerce was much greater than in this case, and there was direct and substantial evidence that the labor activity affected commerce.

Only one more of these cases warrants any attention here. This is the case of *J. L. Brandeis & Sons v. National Labor Relations Board*, 142 F.(2d) 977 (C.A. 8, 1944). This involved a large, ten-story department store in Omaha, Nebraska. During the last fiscal year, it purchased merchandise outside of Nebraska for resale in Omaha at a cost of more than $3,700,000.00. It had mail orders from outside Nebraska in the sum of $20,799.00, and it delivered to out-of-state customers approximately 8,900 packages. It also did some advertising outside of the state.

Citing, among other cases, that of *Santa Cruz Fruit Packing Co., supra*, the court correctly held that the National Labor Relations Act cannot be applied by a mere reference to percentages. It held that:

> "When the unfair labor practice involved is found to have *such a close and substantial relation* to the free flow of interstate commerce that the practice tends to obstruct that commerce, the jurisdiction of the Board to apply the preventive remedies of the Act is undoubted." (Emphasis supplied)

As we have said above, a line must be drawn somewhere. Certainly, as Chief Justice Hughes stated in the *Santa Cruz Fruit Packing Co.* case, cited *supra*,

> "The question that must be faced under the Act upon particular facts is whether the unfair labor

practices involved have such a close and substantial *relation to the freedom of interstate commerce* from injurious restraint that these practices may constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes." (Emphasis supplied)

To assert that $12.00 of business per annum for a single taxicab company and $1,500.00 per annum collectively for 118 taxicab companies joined in a cooperative operating system might have a substantial effect upon the flow of interstate commerce is so ludicrous as to warrant no serious consideration. This is particularly true in the complete absence of any evidence either of picketing at any of the transportation terminals affecting interstate commerce in the City of Seattle or any evidence of any effect of the strike or picketing in the obstruction of interstate commerce. This is why the lower court properly held that interstate commerce had not been affected to any appreciable extent.

In a case like this, unless the reasoning of the late Chief Justice Hughes on the need for some balance between the assertion of federal, as distinguished from state, jurisdiction is to be rejected, then we assert that the jurisdiction of the Supreme Court of the State of Washington should not be set aside where it, after a careful consideration of all of the detailed facts in the case, found, unlike the situation in the *Wags* case, that there was no evidence that interstate commerce had been affected appreciably.

4. The latest case decision of the National Labor Relations Board does not conflict with the judgment of the court below.

This was the 1954 decision in the *Checker Cab Co.* case, 110 N.L.R.B. 683, cited in Petitioners' brief at page 32. The Board there held that "taxicab companies, by their very nature, perform local operations and are essentially local entities." This was the last litigated case of the National Labor Relations Board dealing with its jurisdiction in taxicab cases, except for the recent decision of the Board in an elections case quoted on page 58 of the Petition. We will deal with this case presently.

Spurred on by the decision in the *Guss* case, *supra*, and despite its prior holding in the *Checker Cab Co.* case that the taxicab company business is purely local in character, the National Labor Relations Board, as Petitioners point out, announced a change in exercise of jurisdiction on Thursday, October 2, 1958. See Appendix "C," page 56, of the Petition. It is significant, however, that one of the two new standards set forth in this press release is Standard No. 4, which reads as follows:

> "*Instrumentalities links and channels of Interstate Commerce*: $50,000 from interstate (or linkage) part of enterprise, or from services performed for employers in commerce."

The Petitioners must have considered this relevant to the case at bar, since it is one of the two standards which are printed in the Petition, the other inapplicable standards having been deleted. This clearly indi-

cates to us that the Board considered that any volume of business affecting commerce or the flow of or "links and channels" of interstate commerce amounting to less than $50,000.00, is too small to justify invoking the jurisdiction of the Board. If, spurred on by the *Guss* case, the National Labor Relations Board, as an agency of Congress, has come to the conclusion that a flow of less than $50,000.00 in commerce is too small, then we certainly submit that the doctrine of *de minimis lex* should be applied to a volume of $1,500.00 in this case.

Commencing on page 58 of its Petition, the Petitioner cites the case of *Cab Services, Inc., d/b/a Red and White Cab Company, and Chauffeurs and Associated Workers Union,* 123 N.L.R.B. No. 19. This case is clearly distinguishable.

In the first place, it primarily deals with the question as to whether the Cab Service, Inc., and the 48 taxicabs included in the system should be treated as a unit for the purpose of establishing Board jurisdiction. This question is not in issue in this case as far as this Petition is concerned, since it was not decided by the lower court. Furthermore, as the footnote on page 58 of the Petition indicates, all of the parties in the *Cab Services* case agreed that the operations of the corporation and the association constituted a single employer, which is not the case here.

In the second place, there was direct evidence of the purchase of gas and oil in the employer's business operations to the extent of $60,000.00 per year from out-

of-state sources. There was no such evidence in this case.

In the third place, this involves the question of the Board's jurisdiction over an election and was not a picketing case.

In the fourth place, it does not deal with the question of *de minimis lex* or the question as to whether as small an amount of business in interstate commerce as is involved in this case would affect or tend to affect commerce.

These questions were not even discussed, and none of the cases cited in the Petitioners' brief or in this brief are cited.

5. The judgment of the court below does not conflict with any position taken by the Federal Mediation and Conciliation Service.

On page 36 of the Petition, the Petitioners assert that the Federal Mediation and Conciliation Service "made a determination that the activities of the Seattle Yellow Cab system 'affected commerce' and that the strike of Local 465 threatened to cause a 'substantial interruption in commerce'." It made no such determination. These words are figments of the imagination of the Petitioners. The only record citation given is Tr. 12-13, 28 and St. 117-123. The only evidence was that a representative of the Federal Mediation and Conciliation Service held a couple of informal meetings with representatives of the Petitioners and the respondent, at which no progress was made (St. 117-123).

CONCLUSION

No possible good will be served by taking the time of this court to review a unanimous decision of the Supreme Court of the State of Washington, where no disputed question of law is involved, and where no appreciable effect upon interstate commerce is present. We submit that the Petition should be denied.

Respectfully submitted,

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